

THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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December 10, 1993  
AO-93-27

MARY F. McTIGUE  
DIRECTOR

Mr. Patrick M. Poor  
Advantage Communications, Inc.  
Post Office Box 7178  
Riverside, CA 92513

Re: Receipt of Commissions by Political Committee

Dear Mr. Poor:

This letter is in response to your October 20, 1993 and November 16, 1993 letters requesting an advisory opinion regarding a proposed agreement between Advantage Communications, Inc. ("ACI") and the Massachusetts State Republican Party ("the Committee").

The facts provided in your letter can be summarized as follows: ACI markets discounted long-distance telephone services. The "Advantage Fund Raiser" program ("the program") allows organizations to earn commissions from ACI based on the total billed by ACI to the organization's supporters. The amount of the commission "is based solely on the performance of the organization in marketing [ACI's] services. . . . The political party receives the same commission as any group which conducts this type of fund raiser. . . . The party would essentially be working as an outside salesperson . . . ."

You have provided a sample contract with your letter. The contract requires an organization signing the agreement to market ACI's program to the organization's members, employees, customers and friends at the organization's sole cost. In return for its efforts, the organization would receive 6% of the total received by ACI from new customers obtained through the organization's efforts.

You have asked if the program would be subject to the corporate contribution prohibition contained in M.G.L. c. 55, the Massachusetts campaign finance law. For the reasons which follow, my opinion is that the proposed agreement would involve the receipt of corporate funds by the Committee, to aid or promote the Committee's interests. Such an arrangement is prohibited by M.G.L. c. 55, the campaign finance law.

M.G.L. c. 55, s. 8 provides, in pertinent part:

No corporation . . . doing business in the  
commonwealth . . . shall give, pay, expend or  
contribute, any money or other valuable thing  
for the purpose of . . . **aiding or promoting**  
**or antagonizing the interest of any political**  
**party.**

No person or persons, no political committee, and no person acting under the authority of a political committee, or in its behalf, other than a political committee organized on behalf of a ballot question campaign shall solicit **or receive** from such corporation or such holders of stock **any** gift, **payment**, expenditure, contribution or promise to give, pay, expend or contribute **for any such purpose**.

The commissions, whether called "contributions" or "earned income," would be used by the committee to aid or promote the interests of the Committee and are therefore prohibited by section 8. Since the commissions are payments received from a corporation for such a purpose, they are prohibited by section 8 even if they are not "contributions." Although individuals would provide ACI with the funds which in turn might become commissions, the commissions would be deemed to originate from ACI, not from the individuals purchasing ACI's services.

Even in the absence of the clause in section 8 which prohibits receipt of certain funds from corporations, I believe participation in the "Advantage Fund Raiser" program by Massachusetts political committees would be prohibited.

In Anderson v. The City of Boston, 376 Mass. 178 (1978), the highest court in Massachusetts stated that the campaign finance law is "comprehensive legislation," and "was intended to reach all political fund raising and expenditures within the Commonwealth." The absence of any reference to a proposed form of political fundraising (expenditures by municipalities to influence the vote) was seen as significant, not as an indication that the form of fundraising was intended to be exempt from regulation, but rather as an indication that the Legislature did not even contemplate such activities.

Similarly, I find no indication that the Legislature, in enacting the law, envisioned the involvement of political committees in ongoing business or commercial ventures designed to generate income for the political committees. On the contrary, section 8 indicates a deep concern by the Legislature of corporate involvement in political fundraising. Moreover, the language of the statute reflects a clear intent to limit a political committee's sources of income:

No person or combination of persons . . . shall in connection with any nomination or election receive money or its equivalent, expend or disburse or promise to expend or disburse the same, except as authorized by this chapter. . . **A political committee . . . may receive money or its equivalent, . . . for the purpose of aiding or promoting the success or defeat of a candidate at a primary or election or a political party or principle in public election or favoring or opposing the adoption or rejection of a question submitted to the voters, and for other purposes expressly authorized by this chapter** subject, however, to the provisions thereof. . . (M.G.L. c. 55, s.7).


You have provided, with your letters, copies of opinions from the North Carolina and New York Boards of Elections which indicate that under the laws of those states the ACI program does not involve impermissible corporate contributions to a political party. This office expresses no opinion regarding the laws of other states, except that the campaign finance law which controls political activity in Massachusetts differs from the law controlling such activity in North Carolina and New York. Different laws frequently lead to different conclusions.<sup>1</sup>

For the above reasons, this office concludes that Advantage Communications, Inc. is prohibited by the campaign finance law from implementing its proposed agreement with the Massachusetts Republican party.

This opinion has been rendered solely on the basis of the representations made in your request, the assumptions stated in this letter, and solely in the context of M.G.L. c. 55.

Please do not hesitate to contact this office should you have additional questions.

Very truly yours,

  
Mary F. McTigue  
Director

MFM/cp  
cc: Massachusetts Republican Committee

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<sup>1</sup>. I note that the Federal Election Commission recently provided you with an advisory opinion (AO-1992-40) in which the FEC concluded that a similar transaction would involve the receipt of corporate contributions prohibited by the Federal Election Campaign Act of 1971, as amended.